

1 GREGORY NICOLAYSEN, SBN 98544
2 27240 Turnberry Ln, Ste 200
3 Valencia, CA. 91355
4 Tel: (818) 970-7247
5 Fax: (661) 252-6023
6 Email: gregnicolaysen@aol.com
7 Attorney for Defendant
8 JOHN BRINSON

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11 UNITED STATES DISTRICT COURT
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13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
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15 WESTERN DIVISION

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UNITED STATES OF AMERICA,)	No.: 2:17-CR-00404-AB (2)
)	
)	NOTICE OF MOTION AND
)	MOTION TO SUPPRESS
	)	POST-ARREST
Plaintiff,	)	STATEMENTS AND FRUITS,
	)	FILED BY DEFENDANT
	)	JOHN BRINSON;
	)	MEMORANDUM OF
	)	POINTS AND
	)	AUTHORITIES;
vs.	)	DECLARATION OF JOHN
ARLAN WESLEY HARRELL,	)	BRINSON
et al.,)	
)	
Defendants,	)	DATE: October 11, 2019
	)	TIME: 1:30 p.m.
	)	CTRM: THE HON. ANDRE
_____	)	BIROTTE, JR

1 **TO THIS HONORABLE COURT AND TO PLAINTIFF UNITED**
2 **STATES, THROUGH ITS ATTORNEYS OF RECORD, ASSISTANT**
3 **U.S. ATTORNEYS DEVON MYERS AND VANESSA BAEHR-**
4 **JONES:**

5 **NOTICE IS HEREBY GIVEN** that on October 11, 2019, at
6 1:30 p.m., before the Honorable Andre Birotte, Jr., Judge of the United
7 States District Court, located at 350 W. First Street, Los Angeles, CA 90012,
8 defendant John Brinson, by and through his counsel of record, Gregory
9 Nicolaysen, will respectfully move this Court for an order (1) suppressing all
10 post-arrest statements made by Mr. Brinson and any fruits derived
11 therefrom; and for this purpose, (2) granting an evidentiary hearing to
12 establish facts that support the contentions addressed herein.

13 This motion is based on the case law cited in the motion and is brought
14 pursuant to this notice of motion, the accompanying memorandum of points
15 and authorities, the attached exhibits, all papers contained in the district
16 court file, the attached declaration of John Brinson, and any additional
17 evidence the court permits counsel to introduce at the hearing on the motion.

18 By this motion, Mr. Brinson respectfully requests that the Court set an
19 evidentiary hearing and direct the government to produce the agents who
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1 conducted the post-arrest interview of Mr. Brinson without the necessity of a
2 defense subpoena, to give testimony regarding the subject of this motion.
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5 DATED: August 01, 2019

6 Respectfully Submitted,
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/s/ Gregory Nicolaysen
Gregory Nicolaysen
Attorney for Defendant
John Brinson

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

A. Opening Statement

Defendant, John Brinson is charged in a First Superseding Indictment with the following violations: 18 U.S.C. 2252A(g) [Count 1, Engaging in a Child Exploitation Enterprise]; 8 U.S.C. 2251(a), (e) [Count 13, 14, Production of Child Pornography].

On June 13, 2017, Mr. Brinson was arrested outside a residence located in Fresno, CA. Immediately following his arrest, Mr. Brinson was taken to the Fresno County Sheriff's Office (FCSO) and was unlawfully interviewed without the presence of an attorney. The statements given by Mr. Brinson, together with any evidence derived from the interview, are the subject of this motion.

B. Summary of Defendant's Contentions

At the time of his arrest, Mr. Brinson was taken into custody and interviewed without the presence of an attorney, for nearly six and a half hours.

The post-arrest interview was conducted by agent Greg Squire from the Department of Homeland Security (HSI) - Boston and agent John Kuzma from HSI - Los Angeles. During the seemingly interminable interview, the agents violated Brinson's Miranda rights and used coercive means to undermine his ability to exercise free will, thereby rendering his statements involuntary.

A review of the post-arrest interview shows agents capitalizing on a young man who is in a conspicuous state of despair. As discussed herein, the agents' violations are demonstrated by: (a) the agents' verbal interactions with Brinson; (b) observations of Brinson's body language, principally during the first hour of the interview; (c) the agents' manipulation of long pauses as a tactic to exert pressure on Brinson; (d) Brinson's request for counsel early in the interview; and (e) the agents' disregard for Brinson's request and persistence in forging ahead with the interview.

In short, the agents' technique is clear: ignore Brinson's assertion of rights; stress him out, and persist until he can no longer exercise any voluntary decision.

1 **C. Statement of Facts**

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3 For the first fourteen minutes and nineteen seconds (0:00 -14:19) of
4
5 the videotaped interview, Brinson is left alone in the interview room.¹

6 At 20:23, agent Squire reads Brinson his Miranda rights, but does not
7
8 give Brinson a waiver form to sign.²

9 Immediately following the reading of the rights, and as no waiver
10
11 form is signed, agent Squire launches into a lengthy statement that sets an
12 agenda designed to nix any request for an attorney. In an obviously
13
14 manipulative style designed to trick Brinson into believing that he could
15
16 freely make admissions without any self-incriminating consequences, the
17
18 agent creates a false sense of security which is nothing short of a trap:
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23 ¹ A thumb drive containing the portions of the videotaped post-arrest interview that are
24 cited in this motion will be lodged with this Court concurrently with the filing of the
25 motion. The thumb drive contains two of the four video files comprising the nearly six -
26 hour interrogation. Video file #1 on the thumb drive, Exhibit A, covers the first segment
27 of the interrogation beginning at 11:10 hrs up through 13:06 hrs. Video file #2, Exhibit
28 B, covers the final segment of the interrogation from 16:34 hrs to 17:41 hrs. The digital
means minute 21 and 15 seconds into the video, up to minute 24 at 28 seconds.

²Exhibit A 20:23 to 20:29

1 So I'm up for this being kind of an open conversation
2 with you, okay, as we talk, best if it's honest kind of
3 make it easier to talk about. There's nothing that you can
4 say that will surprise me... Before you answer anything,
5 I just want to kind of lay out sort of where we're at... So
6 you know what self preservation is? You heard of that
7 kind of term before? Like, protect yourself?...But now
8 this dialogue that we're going to have it's your chance to
9 sort of, provide feedback. To tell us your side of the
10 story. And that's really important. Because when
11 everything shakes out. And the lawyers look at
12 everything, and the judges look at everything and the jury
13 looks at everything, without you telling your side and
14 you being able to help yourself, and advocate for other
15 uh, other folks.... I don't think you don't like children. I
16 think you do like children. You're a mentor. You're
17 a...what are you a social sciences major or whatever it
18 was there? So. It's just going to be time to really know
19 that everything is different moving forward today John.
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1 Okay? It's just time to clean out your soul a little bit.

2 Unfortunately, friends that you have or had are not quite
3 as true and loyal as maybe they were before or maybe
4 they were willing to say they were before. So. Hearing
5 that, knowing that, I'd like to have a conversation with
6 you. I'd like to talk about this. What do you think? It's a
7 big step. But I think you're ready.³

8
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11
12 Throughout this lengthy introductory statement by the agent, Brinson
13 sits quietly. When the agent finally stops talking, Brinson continues to
14 remain silent for at least another minute and a half – an exceedingly long
15 stretch of time in a post-arrest interview setting. It is the agent, not Brinson,
16 who breaks the silence; and he does so by once again launching into a
17 persistent effort to get Brinson to speak⁴:

18
19 Today is day one, you gotta push forward now.

20
21 As before, Brinson remains silent for at least a minute.

22
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27 ³ Exhibit A 20:43 to 24:27.

28 ⁴ Exhibit A 25:47 to 25:51

1 And once again, it is the agent who breaks the silence by pushing
2 Brinson with the following remark:⁵
3
4

5 So, tell me about .
6
7

8 For the first time, Brinson does speak. And what he says goes squarely
9 to the heart of his Fifth Amendment rights:⁶
10

11
12 You said I could have an attorney present.
13
14

15 Instead of stopping the interview at that moment and affirming that
16 Brinson is entitled to have a lawyer present before any further questioning
17 resumes, the agent shrewdly pushes forward with the interview, stating that
18 Brinson does not have to “talk about everything.” By this remark, the agent
19 blows off Brinson’s assertion for an attorney:⁷
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26 ⁵ Exhibit A, 26:55 to 26:57.
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28 ⁶ Exhibit A, 27:04 to 27:06.
7 Exhibit A, 27:07 to 27:44.

1 If we are going into questioning, right, and if you want at
2 some point if there is something you don't want to cover
3 then we can stop. Okay. I'd like to get through a few
4 basic things.....You don't have to talk about everything.
5
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8 Again, Brinson remains silent.

9
10 This time, the silence extends for six long minutes,⁸ all the while
11 Brinson's head is face down on the table or pressed against his hands,
12 depicting clear signs of stress under the pressure by agents to proceed with
13 the interview. Repeatedly, the agents pressure Brinson to talk about "Soole"
14 (co-defendant Harrell) and " " (the forum referenced in the
15 Indictment). The video shows Brinson in a state of visible discomfort,
16 hunched forward, rocking back and forth in his chair, placing his hands over
17 his face and running his fingers through his hair in a demonstrative display
18 of increased agony. Blatantly disregarding Brinson's behavior that clearly
19 signals a desire to exercise his right to remain silent, agent Squire presses on,
20 stating: "If you can help us we can help you."⁹
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27 ⁸ Exhibit A, 27:06 to 32:05.
28 ⁹ Exhibit A, 31:08 to 31:13.

1 During this six-minute period, Brinson remains almost completely
2 silent, most of this time with his head face down on the table, speaking only
3 to ask if he can use the restroom. When asked by the agent if he had to “go
4 pee,” Brinson held up not one but two fingers – making it clear that this was
5 not simply urination.¹⁰
6

7 After returning from the restroom, Brinson continued sitting silently.
8 He then asks, “Am I under arrest?”, to which the agent responds, “Yeah.”¹¹
9 After Brinson continues being silent, agent Squire resumes putting on the
10 pressure, telling Brinson that it is “day one”¹² and “gotta take care of
11 yourself.”¹³
12

13 Another long stretch of silence ensues. For nearly five minutes,
14 Brinson sits quietly. It is clear from the videotape that his struggling has
15 escalated to a state of sheer agony.¹⁴ Clearly, Brinson’s intention all along
16 had been to exercise his right to remain silent.
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25 ¹⁰ Exhibit A, 35:23 to 35:29.
26 ¹¹ Exhibit A, 39:18 to 39:20.
27 ¹² Exhibit A, 39:55 to 39:57.
28 ¹³ Exhibit A, 41:21 to 41:23.
29 ¹⁴ Exhibit A, 41:35 to 46:06.

1 At 46:06, Brinson states, “I don’t know what to do.” The agent jumps
2 on this as an opportunity to control the moment, responding with another
3 long speech:¹⁵

6
7 Like I said this is a fresh start for you. The whole gravity of this
8 that has been sitting on you, you’re a spiritual guy right? You
9 know what the right thing to do moving forward is. You done
10 what you done, man, that stuff is literally in the past, okay, so now
11 you need to help yourself, okay? ...what did you do moving
12 forward, to help out and do the right thing. I don’t know if all that
13 stuff is true. But I’m willing to listen.

16
17
18 Brinson does not accept the agent’s so-called invitation. He is
19 overwhelmed by stress and unable to think clearly. At 49:01, he states, “I’m
20 about to throw up.” Agent Squire’s response shows a tactical delight in
21 sustaining Brinson’s stress: “Yeah, that’s a bucket right behind you man, if
22 you want it”¹⁶ Unable to reach for the bucket without vomiting, Brinson

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27 ¹⁵ Exhibit A, 46:09 to 47:25.
28 ¹⁶ Exhibit A, 41:02 to 49:05.

1 asks the agents to hand it to him; but neither one does.¹⁷ Ignoring Brinson's
2 request, agent Squire seizes the opportunity to exploit Brinson's distress by
3 pressing him to make statements.¹⁸

5
6
7 What you say here, is here right now, I'm not trying to tell
8 anyone else about it... Start with something small and easy,
9 something that won't make you throw up.
10
11

12 At this point, the video depicts Brinson as visibly ill and trying not to
13 vomit. For nearly six minutes, the agents relentlessly present Brinson with
14 questions about ,¹⁹ during which the agents show no regard for his
15 condition. They do not offer him water or a break, or even so much as get
16 up to bring him the trash can. Keeping the pressure on, agent Squire states,
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18 “this is very easy man.” Brinson replies “I can’t.”²⁰ – a clear
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26 ¹⁷ Exhibit A, 49:06 to 49:08.
27 ¹⁸ Exhibit A, 49:24 to 49:55.
28 ¹⁹ Exhibit A, 49:56 to 56:10.
 ²⁰ Exhibit A, 56:11 to 56:13.

1 communication that Brinson wants the interrogation to end. Once again,
2 agent Squire ignores Brinson and keeps the pressure on:²¹
3

4
5 I know, the first steps the hardest man, first day of training
6 is the hardest, first day of getting this off your chest is the
7 hardest...I'm telling you honestly that everyone else does
8 the same thing. Start with a simple question and then you
9 move forward...You gotta get through that first one man,
10 okay? And then you start moving forward...You can help
11 yourself here.
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14
15 Again, Brinson remains silent.
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17 And again, agent Squire breaks the silence with persistence: "Tell me
18 about Arlan, how'd ya meet?"²²
19

20 At this stage, the interrogation has reached the one hour point, at which
21 the agents tell Brinson:²³
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26 ²¹ Exhibit A, 56:14 to 57:10.
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²² Exhibit A, 57:46 to 57:51. The reference to "Arlan" is lead defendant Arlan Harrell.

²³ Exhibit A, 1:00:05 to 1:00:26.

1
2 When we do this, right? When we do this. So what
3
4 happens man, is this. We take information that you give us,
5
6 okay? and if we run out and do what Arlan did? That goes
7 toward you. It gives you credit.

8
9 Again, Brinson does not take the agent up on his so-called invitation.
10
11 Instead, he holds his stomach and says, “[expletive] I’m sick.”²⁴ It is now
12 almost past the one-hour point, and the agents do not stop. They keep
13 pushing forward.

14
15 At this point, Brinson breaks down and begins talking about the
16 circumstances of this case.

17
18 The interrogation continues for another five and a half hours, at the end
19 of which the agents state:²⁵

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21
22 We will present your cooperation...those are points of
23 cooperation.

24 Exhibit A, 1:00:37.

25 The excerpt quoted above can be found in Exhibit B at 52:37 to 52:58.

After having refused Brinson's request for an attorney, the agents tell Brinson cavalierly that he will get an attorney "tomorrow" – i.e., now that they are done with him, he can have an attorney.

Exhausted at the end of the nearly six-hour ordeal, Brinson turns to agent Squire and to confirm that if he (Brinson) had continued to assert his right to an attorney, he would have hurt himself legally by losing the opportunity to get credit for cooperating – a clear sign that early on in the interrogation, agent Squire had succeeded in manipulating Brinson into foregoing his constitutional right by instilling the belief that it was more important for Brinson to get cooperation credit from the agents than to get an attorney.²⁶

Indeed, the exchange between Brinson agent Squire leaves no doubt as to the agents' underlying agenda, which was to get Brinson to forego his constitutional rights by leading him to believe that cooperation was more important than his right to counsel:²⁷

²⁶ Exhibit B, 53:29 to 53:37

²⁷ Exhibit B, 53:38 to 54:10.

1 Yeah. It isn't cooperating. That's exactly what it is. So. The
2 fact that you did cooperate with us and discussed everything
3 is helpful. There's no question about it. Before we talked
4 we didn't know any side of your story. We didn't know any
5 of what we discussed today. So the fact that you cooperated
6 that's on us. We go back and we say "yup" we tell the
7 attorney that, ya know, you did cooperate, and that goes
8 toward you.

12 After being subjected to pressure for an entire hour, Mr. Brinson
13 finally caved in and gave statements which are now the subject of this
14 motion.

18 II.

19 THIS COURT SHOULD SUPPRESS THE STATEMENTS
20
21 MADE BY MR. BRINSON IN HIS POST-ARREST INTERROGATION
22
23 DUE TO A VIOLATION OF HIS *MIRANDA* AND
24
25 FIFTH AMENDMENT RIGHTS
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1 **A. Applicable Standards**

2 The standards for determining whether a defendant's statements to law
3 enforcement are involuntary was summarized as follows by the Ninth
4 Circuit in United States v. Miller, 984 F.2d 1028 (9th Cir. 1993):

5 The Fifth Amendment guarantees that "no person . . . shall be
6 compelled in any criminal case to be a witness against himself."

7 An involuntary statement by a defendant violates the Due Process
8 Clause of the Fifth Amendment. Colorado v. Connelly, 479 U.S.
9 157, 163, 93 L. Ed. 2d 473, 107 S. Ct. 515 (1986). Both physical
10 and psychological pressure can lead to involuntary confessions.

11 Blackburn v. Alabama, 361 U.S. 199, 206, 4 L. Ed. 2d 242, 80 S.
12 Ct. 274 (1960). While a confession accompanied by physical
13 violence is per se involuntary, see Stein v. New York, 346 U.S.
14 156, 182, 97 L. Ed. 1522, 73 S. Ct. 1077 (1953), psychological
15 coercion provokes no per se rule. Haynes v. Washington, 373 U.S.
16 503, 515, 10 L. Ed. 2d 513, 83 S. Ct. 1336 (1963).

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25 In psychological coercion cases, we must consider the totality of
26 the circumstances involved and their effect upon the will of the
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1 defendant. Schneckloth v. Bustamonte, 412 U.S. 218, 226-27, 36
2 L. Ed. 2d 854, 93 S. Ct. 2041 (1973); United States v. Guerrero,
3 847 F.2d 1363, 1365-66 (9th Cir. 1988). The pivotal question in
4 each case is whether the defendant's will was overborne when the
5 defendant confessed. Schneckloth, 412 U.S. at 225-26; United
6 States v. Tingle, 658 F.2d 1332, 1335 (9th Cir. 1981).

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11 Miller, *supra*, 984 F.2d at 1030-31. *See*, Culombe v. Connecticut, 367 U.S.
12 568, 602 (1961) (holding that test for voluntariness is whether the confession
13 was product of essentially free and unconstrained choice by its maker).

14
15 The determination as to whether a defendant's statements to law
16 enforcement were involuntary involves a combination of factors, which
17 includes an assessment of coercive police behavior. United States v.
18 Preston, 706 F.3d 1106, 1113-1114 (9th Cir. 2013) (“Coercive police activity
19 is a necessary predicate to [a] finding that a confession is not voluntary.”),
20 citing Connelly, 479 U.S. at 167. Other relevant factors include the length
21 of the interrogation, its continuity, and the defendant's maturity, education,
22 physical condition, and mental health. Withrow v. Williams, 507 U.S. 680,
23 693-694 (1993). “It is not sufficient for a court to consider the circumstances
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1 in isolation. Instead, ‘all the circumstances attendant upon the confession
2 must be taken into account.’ Doody v. Schriro, 596 F.3d 620, 638 (9th Cir.
3 2010), quoting Reck v. Pate, 367 U.S. 433, 440 (1961). Inducements
4 generally serve to invalidate a confession. *See, e.g.*, Brady v. United States,
5 397 U.S. 742, 754 (1970) (holding that when accused is “in custody, alone
6 and unrepresented by counsel . . . even a mild promise of leniency [has been]
7 deemed sufficient to bar the confession . . . because defendants at such times
8 are too sensitive to inducement and the possible impact on them too great to
9 ignore and too difficult to assess.”).
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12 The combination of factors underscoring the voluntariness analysis
13 likewise takes into account the interplay between the tactics utilized by the
14 agents in tandem with the defendant’s underlying motivation to benefit
15 himself. In addressing this delicate balance, the Supreme Court has
16 observed that “in cases where the statement was made under circumstances
17 where it is likely that the declarant had a significant motivation to obtain
18 favorable treatment, as when the government made an explicit offer of
19 leniency in exchange for declarant’s admission of guilt, the entire statement
20 should be inadmissible.”). Williamson v. United States, 512 U.S. 594, 620
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22 (1994) (Kennedy, J., concurring).
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1 The analysis as to whether a defendant's statements are involuntary
2 and whether the defendant has effectively waived his Miranda rights
3 involves overlapping factors. In this context, the Ninth Circuit has held, in
4 an *en banc* opinion, that “[t]he standard of review does not change when the
5 inquiry shifts from the voluntariness of the confession to the voluntariness of
6 an asserted Miranda waiver.” Collazo v. Estelle, 920 F.2d 411, 415 (9th Cir.
7 1991). In quoting the excerpt below from Colorado v. Spring, 479 U.S. 564,
8 573 (1987), which in turns cites to Moran v. Burbine, 475 U.S. 412, 421
9 (1986), the Court in Collazo made it clear that “the inquiry whether a waiver
10 is coerced has two distinct dimensions” and that “as with the voluntariness
11 of a confession, the voluntariness of a Miranda waiver is decided by first
12 examining objectively the methods the police used to produce the waiver.”
13 940 F.2d at 416. The Collazo opinion further explains:
14

15 “First the relinquishment of the right must have been voluntary in
16 the sense that it was the product of a free and deliberate choice
17 rather than intimidation, coercion, or deception. Second, the
18 waiver must have been made with a full awareness both of the
19 nature of the right being abandoned and the consequences of the
20 decision to abandon it. Only if the 'totality of the circumstances
21

1 surrounding the interrogation' reveal both an uncoerced choice and
2 the requisite level of comprehension may a court properly
3 conclude that the Miranda rights have been waived."

4
5 Collazo, 940 F.2d at 415-416.
6

7 In applying the Ninth Circuit's standards to this case, the
8 circumstances addressed in Collazo are worth noting. There, the petitioner
9 had been arrested on suspected murder and burglary charges. He was read
10 his Miranda rights, declined to waive them and asked to speak to an
11 attorney. One of the interrogating police officers told him that "it might be
12 worse" for him if he talked to an attorney, and that it was in his interest to
13 talk to them without an attorney. Three hours later, petitioner was again
14 advised of his Miranda rights, at which time he indicated that he had
15 changed his mind about speaking to an attorney and confessed to his
16 participation in the crimes.
17

18 After his conviction, petitioner sought post-conviction relief.
19 Ultimately, the Ninth Circuit reversed the district court's denial of the
20 habeas petition, finding that the confession, which was admitted at trial, was
21 "involuntary and its use to convict him violated his Constitutional rights."
22 940 F.2d at 413. In so holding, the Court applied the overlapping standards
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24

1 in separately discussing the voluntariness claim and Miranda violation
2 claim. First, the Court addressed the Miranda issue:
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4 We now examine Officer Destro's response to Collazo's initial
5 assertion of his *Miranda* rights. We must determine, as a
6 threshold matter, whether Officer Destro's attempt to
7 discourage Collazo from speaking to a lawyer is compatible
8 with a system of justice that does not permit police coercion.
9

10 We conclude it is not, and we so conclude for a multitude of
11 reasons.
12

13
14 Collazo, 940 F.2d at 416.
15

16
17 The Court then turned to the voluntariness issue:
18

19 First, applying the traditional Fifth Amendment voluntariness
20 test, Officer Destro's nine terse sentences, understood plainly,
21 were coercive. His words were calculated to pressure Collazo
22 into changing his mind about remaining silent, and into talking
23 without counsel to his interrogators. Destro's warning that it
24 "might be worse" for Collazo if he did not cooperate with the
25 police can only be seen as menacing. During the suppression
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1 hearing, the prosecutor himself characterized Officer Destro's
2 tone and presentation as "insistent." The tape of the interview
3 confirms this description.

4

5 Collazo, 940 F.2d at 416.

6

7 The Ninth Circuit has recently endorsed the analysis in Collazo. In
8 Rodriguez v. McDonald, 872 F.3d 908 (9th Cir. 2017), the Court evaluated
9 whether the confession of Petitioner, who was fourteen at the time, was
10 obtained in violation of both Miranda and the Fifth Amendment. Adopting
11 the analysis in Collazo, the Rodriguez court held in favor of petitioner on
12 both grounds, finding that the waiver was involuntary and the subsequent
13 confession coerced. Relevant portions of the analysis in the opinion, which
14 directly applies to defendant Brinson's motion here, is quoted below:²⁸

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19 The voluntariness of a suspect's waiver — like the
20 voluntariness of a subsequent confession — is assessed
21 by examining both the police methods used to produce

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²⁸ The quotation marks within the excerpts of the opinion are taken from the record
before the Court. Brackets in the quoted excerpt are by counsel for defendant Brinson.
Parentheses in the excerpt are within the Rodriguez opinion.

1 the waiver and the individual characteristics of the
2 suspect to determine whether the suspect's will was
3 overborne. [citing Collazo at 415-16].

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5 ***
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7 After Mr. Rodriguez asked for a lawyer, the officers
8 continued to pressure him. Though Mr. Rodriguez had
9 repeatedly denied participating in the shooting, the
10 officers told him he would be charged with murder later
11 that day, increasing the urgency of cooperation. An
12 officer reminded Mr. Rodriguez that they had "tried to
13 give (him) the opportunity to straighten things out,"
14 recalling the officers' earlier promises of leniency.
15
16 ***
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18
19 Turning to the other prong of the voluntariness inquiry,
20 the tactics employed by police in this case further support
21 the conclusion that Mr. Rodriguez's confession was not
22 voluntary. The officers suggested to Mr. Rodriguez that
23 cooperation would result in leniency: they told him they
24 would take "what you tell us" to the district attorney "and
25
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1 say, hey man, you know what, this guy — we think —
2 he's — you know, he's 14 maybe there was a little bit of
3 influence from the other guys the older guys, you know,
4 he still — we can still save him he's not an entirely bad
5 dude.” Even more explicitly, they suggested that
6 cooperating was the only way to “save (his) life”: “I
7 mean, that's it what's done is done, but this is like the rest
8 of your life now, this is the difference, you('re) only 14,
9 man. It's not like you're 18, 19 and you know, you're 14
10 years old, man, *you can still save your life. You still have*
11 *a lifetime.*” [Italics in original] Further: “You got a
12 chance to set things right, take responsibility for what
13 you did, and then whatever happens happens but be
14 assured that what we would like to do is talk to the
15 district attorney tell him that you were cooperative and
16 being truthful and [accept] the responsibility.”

23 ***
24

25 The voluntariness of a suspect's waiver of his Miranda
26 rights—like the voluntariness of a subsequent
27

1 confession—is assessed by examining both the police
2 methods used to produce the waiver and the individual
3 characteristics of the suspect to determine whether the
4 suspect's will was overborne.

5 ***
6

7 Because this pressure followed Mr. Rodriguez's
8 invocation of his right to counsel, it constituted
9 "badgering" in direct violation of *Miranda* and *Edwards*
10 [v. *Arizona*, 451 U.S. 477 (1981)] [internal citations
11 omitted]. At a point where the law required (the officer)
12 to back off, he did not 'scrupulously honor' (Mr.
13 Rodriguez's) right to cut off questioning; he stepped on
14 it." [citing Collazo at 417]. Particularly in light of Mr.
15 Rodriguez's special vulnerabilities to coercion, [internal
16 citations omitted], we hold that these coercive police
17 tactics overbore Mr. Rodriguez's will, and that his waiver
18 of his previously invoked right to counsel was not
19 voluntary.

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27 Rodriguez, 872 F.3d at 922-924.
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1 **B. Under The Totality Of Circumstances Test, Brinson's**
2 **Statements Were Involuntary Because His Will Was**
3 **Overborne When He Made Incriminating Statements**

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6 **1. The Agents Utilized Tactics of Deception And**
7 **Coercion To Discourage Brinson From Exercising**
8 **His Right To An Attorney**
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11 In the present matter, the actions of agents Squire and Kuzma in
12 conducting Brinson's post-arrest interrogation fall squarely within the
13 purview of the conduct deemed unlawful by the Ninth Circuit in Collazo and
14 Rodriguez. A review of the videotape, summarized earlier in this motion,
15 demonstrates their systematic and continual attempts to discourage Brinson
16 from speaking to an attorney. In employing tactics that eventually
17 succeeded in getting Brinson to give in, the agents engaged in coercive
18 behavior that began immediately following the reading of Miranda rights.²⁹
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27 ²⁹ Exhibit A, 20:42 to 23:29; 23:59 to 24:24. Selected excerpts from this portion of the
28 interrogation have been quoted in the Introductory section of this motion.

1 Of note is the shrewd tactic by agent Squire to cut Brinson off
2 immediately after reading his rights in saying to Brinson, “Before you say
3 anything” and launching into a speech that is clearly designed to discourage
4 Brinson from asserting his right to an attorney. In essence, what the agent is
5 really saying to Brinson is this: “Mr. Brinson, before you exercise your right
6 to an attorney, which would require us to stop talking with you, I’d like to
7 discourage you from exercising that right and have a conversation with you
8 without the presence of an attorney so that you can lay yourself out and at
9 the same time give me all the information I need from you.” As the Ninth
10 Circuit did in Collazo and Rodriguez, this Court should read through the
11 façade of the agents’ tactics and cull the underlying strategy of manipulation
12 that directly undermined Brinson’s rights.

18 These tactical maneuvers segue both with the voluntariness analysis
19 and with the Miranda violation analysis. From the latter perspective, agent
20 Squire’s calculated response to Brinson’s request for a lawyer³⁰ is
21 tantamount to a failure to properly advise Brinson of his constitutional right
22 to an attorney, as the agent’s tactic of disregarding Brinson’s invocation by

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28³⁰ Exhibit A, 27:07 to 27:44

1 launching into a narrative that redirects the focus of the interrogation was a
2 ploy designed to confuse Brinson. Tactics that create confusion, mixed
3 together with the repeated and prolonged nature of the questioning, are
4 relevant factors in the Fifth Amendment analysis. See Schneckloth, 412 U.S.
5 at 226.
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8 As the excerpts quoted earlier show, the agents' tactics during the
9 interrogation inflicted continual psychological stress on Brinson, as they
10 repeatedly used terms and phrases aimed at pressuring Brinson to cave in,
11 expressions such as , “day one, gotta push forward”³¹ and statements that
12 include the phrase, “you can help yourself here.”³² Such tactics are directly
13 on point with the discouragement and promises of leniency recognized by
14 the Ninth Circuit as violative of Fifth Amendment rights, *E.g.*, Rodriguez,
15 1872 F.3d at 923-924.
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18 Agent Squire's tactics continued unabated even after Brinson's
19 statement, “You said I could have an attorney present.”³³ Instead of
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28 ³¹ Exhibit A, 25:49 to 25:50.
³² Exhibit A, 56:14 to 57:10
³³ Exhibit A, 27:04 to 27:06.

1 responding in the affirmative and terminating the interview based on
2 Brinson's assertion of his right to counsel, agent Squire shrewdly
3 circumvented Brinson's request by redirecting the interrogation in telling
4 Brinson that the parameters of the interview were within Brinson's control –
5 when in fact it was the agent setting the agenda.
6

8 Of course, the agent's comments were sheer window dressing because
9 Brinson had already asserted his right to counsel, and the agent had no
10 intention whatsoever of relegating any control to Brinson. Instead, the agent
11 dangled before Brinson the unsettling dilemma between choosing between
12 exercising his constitutional right to counsel, on the one hand; and
13 cooperating with the agents, for which he would have to forego his rights.
14 Intent on ensuring that Brinson elected the latter, the agent wasted no time in
15 launching forward with lengthy narratives, demanding that Brinson "get
16 through some basic stuff."³⁴ Utilizing such phrasing as "basic stuff" was
17 once again nothing more than sheer manipulation, as agent Squire was *fully*
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28 ³⁴ Exhibit A, 27:08 to 27:38.

1 aware that there was nothing “basic” about the questions he was posing or
2 the answers he was seeking to elicit from Brinson.
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4 Indeed, after blowing off Brinson’s request for counsel and under the
5 innocuous pretense of discussing “basic stuff,” the agent was digging
6 directly into the heart of the case in seeking to have Brinson inculpate
7 himself completely before ever consulting with an attorney. The pretenses
8 used by agent Squire here unconstitutionally blurred the critical line between
9 “express questioning”, as the agent would have Brinson believe was being
10 conducted; compared with questioning aimed at getting Brinson to
11 incriminate himself, which was precisely the agent’s game plan. This
12 distinction has not been lost on either the Ninth Circuit nor the Supreme
13 Court in the Fifth Amendment analysis. Rodriguez, *supra*, 872 F.3d at 908,
14 quoting Rhode Island v. Innis, 446 U.S. 291, 302 n. 8 (1980) (defining
15 interrogation as either “express questioning” or “words or actions on the part
16 of police officers that they should have known were reasonably likely to
17 elicit an incriminating response”).

18 Manipulations of this type have Fifth Amendment implications and
19 closely track those that were held unconstitutional by the Ninth Circuit in
20 Henry v. Kernan, 197 F.3d 1021 (9th Cir. 1999). In Henry, the Ninth
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1 Circuit reversed the district court's admission of defendant's statements,
2 holding that they were involuntary and also given in violation of Miranda.
3
4 The Court's observations of the deceptive practices by law enforcement are
5 instructive here:

6 We conclude that the slippery and illegal tactics of the
7 detectives overcame Henry's will and that he continued his
8 confession only as a result of their deception. Officer White's
9 statement that "what you say can't be used against you right
10 now" was deliberately designed to undermine Henry's ability to
11 control the time at which the questioning occurred, the subjects
12 discussed, and the duration of the interrogation. Such
13 misleading comments were intended to convey the impression
14 that anything said by the defendant would not be used against
15 him for any purposes. White's further comment that "we just
16 want to know" reinforced that false impression by suggesting
17 that the officers merely sought to satisfy their curiosity.

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23 Henry, 197 F. 3d at 1027-1028.
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The Henry court took issue with the fact that after the defendant expressed his desire for an attorney the detectives ignored his inquiries and responded by firing questions at Henry, such as:

“Why did you shoot him?”

Henry, 197 F. 3d at 1027.

The interrogators proceeded to interrogate Henry for an hour. *Id.*

In the present matter, the agents acted with the same type of “slippery and illegal” tactics addressed in Henry. Id. Shortly after invoking his right to an attorney, Brinson sat silently, not saying a word, for approximately five long minutes during which the agents continually imposed questions they wanted answers to:

Nothing surprises us John, this isn't the kind of thing you can talk

about with buddies down at the bar.³⁵

When did you first find ? Maybe a year ago.

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³⁵ Exhibit A, 28:05 to 28:10

36 Exhibit A, 28:33 to 29:03

1 Did Soole turn you to it? Did Arlan tell you where it was?³⁷
2

3 You don't have to nail down a specific date. It's not a good
4 situation. But like I said, we talked to Soole, Arlan.³⁸

5 What you say here, is here right now, I'm not trying to tell
6 anyone else about it.³⁹
7

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9 These tactics closely track those in Henry that the Ninth Circuit flat-out
10 rejected. Accordingly, this Court should reach the same conclusion as in
11 Henry in finding that the agents' deceptive and coercive tactics violated
12 Brinson's Fifth Amendment rights and rendered his statements inadmissible
13 as being involuntary and also being obtained in violation of Miranda.
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18 2. Brinson's Physical Condition Deteriorated During The
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20 First Hour Leading Up To His Eventual Submission To
21 The Agents
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26 ³⁷Exhibit A, 29:15 to 29:20
27 ³⁸Exhibit A, 30:43 to 30:46
28 ³⁹ Exhibit A, 49:23 to 49:29

1 This factor weights strongly in favor of suppression. The videotape of
2 the first hour of Brinson's interrogation reveals that Brinson's demeanor and
3 posture are characteristic of someone under extreme anxiety, fear, and
4 stress.⁴⁰ He remains silent for extended periods of time after agent Squire's
5 intentionally deceptive response to his request for an attorney. Despite all of
6 these signs of stress and fear, and as he sits silently for extended periods of
7 time, the agents continue to torpedo Brinson with questions that visibly wear
8 Brinson down over the first hour.

12 As the agents apply these coercive tactics in repeatedly bombarding
13 Brinson with questions and statements and disregarded his condition, the
14 video shows Brinson becoming visibly ill. He asks to be excused to the
15 bathroom so that he may empty his bowels⁴¹ and although the agents
16 accommodate him, upon his return he remains visibly ill. This progresses to
17 the point where Brinson implores the agents that he is going to vomit and
18 asks for the trash can to vomit in. As a clear tactic of coercion, the agents
19 refuse his request; instead of handing Brinson the trash can or offering him a

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27 ⁴⁰ Exhibit C is a collection of still photographs taken from the videotaped interview.
28 ⁴¹ Exhibit A, 35:26 to 35:33.

rest break or some water, agent Squire tells Brinson to get it himself.⁴² What makes this tactic even more coercive is the visible transition in behavior by which the agents' questioning becomes even more aggressive in an attempt to capitalize on Brinson's obvious physical pain and discomfort.

The agents used Brinson's weakened state along with lies to wear him down. The fact that he *still* remained silent for long stretches during the first hour shows his commitment to exercise his constitutional right to remain silent and seek counsel; but the agents would have none of it.

The *first* time in the interrogation that Brinson begins to answer questions is one hour into the session. It is clear from the video that his submission is borne out of pain and distress. Indifferent to all of this, the agent asks “When did you find [redacted] ? A year ago something like that?” Brinson responds “Sure”.⁴³ It is clear, even to agent Squire, that Brinson is only succumbing to the questions as a result of his physical state coupled with the agent’s refusal to let up on him. By the time Brinson caves in at the one-hour point, he was completely drained from agent Squire’s aggressive persistence.

⁴² Exhibit A, 49:01 to 49:09

⁴³ Exhibit A, 49:49 to 50:07

1 In a manner suggestive of awareness that a defense motion to suppress
2 might be forthcoming, agent Squire inserted choice expressions nearing the
3 one-hour point as Brinson showed obvious signs of wearing down. Clearly
4 seeking to protect the record by trying to make it all appear voluntary, the
5 agent says to Brinson, “I don’t want to put words in your mouth.”⁴⁴ This
6 tactical ploy cannot, however, obscure the reality of the agent’s coercive
7 maneuvers.

11

12 **3. Length Of Interrogation**

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14 This factor weighs strongly in favor of suppression. The agents
15 pressure Brinson for the entire first hour before he makes any incriminating
16 statements, during which the devious tactics discussed above are employed
17 and the video shows Brinson visibly agonizing in his chair and in noticeable
18 physical discomfort.

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21 In total, the interrogation lasts nearly five and a half hours – a clear
22 sign that the agents had no interest in honoring Brinson’s invocation of his
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⁴⁴ Exhibit A, 50:08 to 50:10

1 right to counsel.⁴⁵ Their objective was simply to squeeze him for every item
2 of information possible before he ever spoke with an attorney.
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4 The confession obtained in the present matter was not a product of Brinson's
5 free will.
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8 **4. Miranda Violation: Failure To Terminate Interrogation**
9 **Upon Invocation Of Right To Counsel, And Absence Of**
10 **A Knowing And Intelligent Waiver Of Rights**

12 At minute 39 on the videotape – i.e., ten minutes after having
13 requested an attorney -- Brinson asks, “Am I under arrest?” This
14 confounding question further confirms Brinson’s debilitated and confused
15 mental state. A person who was not under the stress, anxiety, and confusion
16 induced by the agents would surely have realized that they were under arrest.
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19 This confusion also demonstrates that Mr. Brinson could not have
20 “intelligently” waived his rights; nor could he have “relinquished his rights
21 with full awareness of the nature of the rights and the consequences of the
22 decision.” Patterson v. Illinois, 487 U.S. 285, 292 (1988).
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28 ⁴⁵ Exhibit A, 26:50 to 27:44

1 At minute 56, while Brinson has yet to say anything substantive to the
2 agents and is already appearing visibly ill, agent Squire demands that Mr.
3 Brinson “start easy, something easy man,” Brinson responds, “I can’t.”
4 Brinson clearly expressed his desire to stop the interview. The interview
5 should have immediately terminated. However, agent Squire simply ignores
6 Mr. Brinson’s plea by stating, “I know,” and continues pressuring Brinson to
7 answer his questions.

8 Beyond the voluntariness analysis discussed above, these tactics by
9 the agent directly undermined Brinson’s right to counsel and his right to
10 knowingly and voluntarily waive his rights if the interview were to properly
11 continue. Without any regard for either right, agent Squire continues his
12 Blitzkrieg-like attack upon Brinson by stating, “we’re here man, this is
13 where we’re at...”⁴⁶

14 The videotape clearly shows Brinson’s inability to think clearly and
15 escalating stress. As agent Squire continues his unrelenting pressure,
16 Brinson’s head remains on the table and he covers his head with his arms to
17 shield himself from Squire’s attack. Again, the interview does not terminate.
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46 Exhibit A, 56:25 to 56:29

1 The continual and persistent questioning of the agents, the extreme stress
2 and anxiety, Brinson's helplessness, combined with the fact that Brinson
3 inquired about having an attorney, illustrates that Brinson's statements were
4 not the product of "free and deliberate choice." Kirkpatrick v. Chappell, 872
5 F.3d 1047, 1055 (9th Cir. 2017). The endless and relentless questioning by
6 the agents amounted to improper inducement such that Brinson's free will
7 was overborne. Moran, 475 U.S. at 421.

11

12 **5. The Agents' Actions Constitute Improper Inducements**

13 **That Violated Brinson's Fifth Amendment Rights**

15 The agents frame the *entire* interrogation as if speaking to them without
16 consulting an attorney will be rewarded as cooperation with resulting
17 leniency. By dangling such inducements, the agents instilled a false sense of
18 security in regard to any legal benefits Brinson could expect to receive and
19 diverted the discussion away from Brinson's exercise of his constitutional
20 rights, as he clearly had expressed a desire to consult with counsel. The
21 videotape is replete with examples of the types of remarks made by the
22 agents to induce compliance and thus forego the exercise of rights, all the
23 while wearing Brinson down for the entire first hour as he agonized in his

1 seat and sat silently for long stretches of time while the agents barraged him
2 with questions and statements, a few of which are listed here:
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4

5 Self-preservation is John taking care of John right now.⁴⁷
6

7 If you can help us, we can help.⁴⁸
8

9 You gotta go for yourself right now.⁴⁹
10

11 What is important is taking that next step.⁵⁰
12

13 You gotta take care of yourself.⁵¹
14

15 You done what you done man. That stuff is literally in
16

17 the past. So now you gotta help yourself, okay?⁵²
18

19 What you have to think about an hour from now a day from
20 now. Little steps. So what did you do moving forward. To help
21 out.⁵³
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24 ⁴⁷ Exhibit A, 30: 59 to 31:03
25 ⁴⁸ Exhibit A, 31:09 to 31:14
26 ⁴⁹ Exhibit A, 31:41 to 31:44
27 ⁵⁰ Exhibit A, 33:15 to 33:18
28 ⁵¹ Exhibit A, 41:20 to 41:22
29 ⁵² Exhibit A, 46:32 to 46:45
30 ⁵³ Exhibit A, 46:55 to 47:09

1 Because when everything shakes out. And the lawyers look at
2 everything, and the judges look at everything and the jury looks
3 at everything, without you telling your side and you being able
4 to help yourself⁵⁴
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8 This Court should not tolerate such manipulative gamesmanship by the
9 agents. The videotape amply establishes that Brinson was far too sensitive
10 to inducement in this setting and that suppression is warranted on this basis
11 alone. Moran, 475 U.S. at 421.
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27 ⁵⁴ Exhibit A, 23:59 to 24:24
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III.

AN EVIDENTIARY HEARING SHOULD BE

CONDUCTED WITH TESTIMONY FROM THE

AGENTS

This motion satisfies the requirement of presenting a *prima facia* showing sufficient to warrant an evidentiary hearing on the issues addressed herein.

Accordingly, Mr. Brinson respectfully requests that the Court schedule an evidentiary hearing and issue an order directing the agents who conducted the post-arrest interrogation of Brinson to appear to give testimony without the need for a subpoena.

Pursuant to Federal Rule of Criminal Procedure 26.2, Mr. Brinson further requests an order from this Court directing the government to produce all statements of the witnesses at the hearing that pertain to the subject matter of their testimony.

/s/ Gregory Nicolaysen
Gregory Nicolaysen
Attorney for Defendant
John Brinson